IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3433 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

YOGESH C PATEL

Versus

GUJ. STATE CIVIL SUPPLIES CORPORATION LTD

Appearance:

MR SIVANG SHUKLA for MR YN OZA, advocate for the Petitioner

MR KM PATEL with MS YOGINI V PARIKH for Respondents No. 1, 4

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 19/01/2001

ORAL JUDGEMENT

By means of filing this petition under Article

226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ or order, directing the respondents to regularise his services with effect from 1984 i.e. from the date of his first appointment and treat his reappointment vide order dated July 14, 1990 as continuing one. The petitioner has further prayed to direct the respondents to give him all consequential and incidental benefits including full backwages, difference in pay etc. treating him as having been appointed on regular/permanent basis with effect from 1984. The petitioner has also prayed to direct the respondents to give him difference in pay and all other benefits including that of equal pay for equal work with effect from 1984 by putting him in the pay scale of Rs. 950-1400 with all other consequential benefits.

2. The petitioner is a resident of Nadiad town and is a Commerce graduate. In 1984, Gujarat State Civil Supplies Corporation Limited, Gandhinagar ("Corporation" for short) had commissioned a gas distribution centre at Nadiad. The Manager of the Corporation by his letter dated March 24, 1983 had permitted the District Supply Officer, Mamlatdar's Office, Nadiad to recruit employees on daily wages to meet the increase in work of allotment of new gas connections in the city with a direction that the employees so recruited should be paid wages at the rate of Rs.12/- per day. The order dated February 18, 1984 passed by the District Supply Officer, Office of Mamlatdar, Nadiad, which is produced at Annexure-A to the petition, indicates that by February, 1984, 4300 customers were given gas connections and not only the work of refilling empty bottles was going on, but the work of registering names of customers for granting new gas connections was also going on and, therefore, in order to meet the exigencies of the work, the petitioner, who had experience of gas distribution, was appointed as daily rated salesman and his wage was fixed at the rate of Rs. 12/- per day. What is important is that in the said letter it was mentioned that the appointment on the terms and conditions stated therein was to continue from month to month. Though the petitioner had put in 5 years of service, his services were not regularised and many other persons were recruited by way of direct selection between 1984 and 1989. As the petitioner was not granted the benefit of regularisation of his services, he instituted Special Civil Application No. 8050 of 1989 and prayed the High Court to direct the respondents to regularise his services. During the pendency of the petition, services of the petitioner and other employees came to be terminated on May 14, 1990. It may be stated that though in the order of appointment dated February

18, 1984 it was mentioned that the petitioner would be entitled to wages at the rate of Rs. 12/- per day, he was being paid wages at the rate of Rs. 23/- per day when his services with other employees were terminated on May 14, 1990. The petitioner and other employees challenged the termination of their services by filing Special Civil Application No. 3723 of 1990. When the petition came-up for hearing, the learned counsel for the Corporation stated at the Bar that pursuant to interim order passed by the Court, services of the petitioners of Special Civil Application No. 3723 of 1990 were continued and those petitioners were in service. It was further stated that the impugned order of termination of services passed in respect of the petitioner was treated as cancelled. What was solemnly stated before the Court was that in future if the Corporation wished to bring to an end services of the petitioners, the procedure as per the provisions of the Industrial Disputes Act, 1947 would be followed before terminating their services. In view of the statements made at the Bar on behalf of the Corporation, the learned Single Judge of this Court in Special Civil Application No. 3723/90 held that the grievance of the petitioners with regard to the apprehended termination of the services in unlawful manner did not survive. It may be mentioned that in the said petition, a relief for regularisation of services was also claimed. So far as regularisation of services is concerned, the Court directed that the petitioners should submit representation to respondent no.1 praying that their services be regularised and respondent no.1 was directed to decide the representation that may be submitted by the petitioners within a period of three months from the date of submission of representation. With the aforesaid directions, Special Civil Application No. 3723 of 1990 was disposed of by the Court vide order dated June 27, 1990.

3. Pursuant to the observations made by the High Court in Special Civil Application No. 3723 of 1990, the petitioner made representation to respondent no.1 to regularise his services, but instead of considering the request of the petitioner to regularise his services, the Corporation issued a fresh order dated July 14, 1990 appointing the petitioner as a salesman-cum-clerk on daily wages stipulating that the petitioner would be entitled to wages at the rate of Rs. 19.20 ps. per day. In the said order, it was specifically mentioned that the appointment of the petitioner on the post was afresh and the petitioner was not entitled to any benefit of past service. A copy of order dated July 14, 1990 is produced by the petitioner at Annexure-C to the petition. After

issuance of order dated July 14, 1990, representation made by the petitioner for regularisation of his services was taken-up for consideration by the Corporation. The Manager (Personnel) of the Corporation vide letter dated June 26, 1991 informed the petitioner that the Corporation was inclined to consider his case for regularisation of his services sympathetically and positively provided the petitioner was ready to withdraw Special Civil Application No. 8050 of 1989 which was filed by him for regularisation of his services. This letter dated June 26, 1991 is produced by the petitioner on record of the petition at Annexure-A along with his affidavit-in-rejoinder. As the Corporation was inclined to consider the case of the petitioner for regularisation of his services positively and sympathetically, the petitioner in good faith withdrew Special Civil Application No. 8050 of 1989 and the said petition was accordingly disposed of by an order dated September 29, 1992 passed by the Division Bench comprising S.B.Majmudar, J. (as he then was) and A.N.Divecha,J.). Though the petitioner was promised that his case for regularisation would be considered positively and sympathetically, no orders were passed regularising his services and, therefore, the petitioner has filed the present petition. In the petition, the petitioner has mentioned that the petitioner is performing similar work as that of permanent/regular clerks employed by the Corporation and is, therefore, entitled to benefit of regularisation. The petitioner has averred that the minimum qualification for the post of salesman-cum-clerk as stipulated in the G.S.C.S.C. Limited Recruitment & Promotion Rules, 1985 is that the candidate should have passed HSC Examination (10 + 2) or equivalent examination with one year's experience in selling in departmental stores, gas agencies, petrol pumps etc. and as the petitioner is a commerce graduate having sufficient experience even when he was initially appointed in the year 1984, his services ought to have been regularised by the respondents. What is emphasised in the petition is that in view of increase in work of Centre at Nadiad, more hands are needed and, therefore, services of the petitioner should be regularised. Under the circumstances, the petitioner has filed present petition and claimed reliefs to which reference is made earlier.

4. Mr. H.C.Vyas, Incharge Manager (Personnel) of the Gujarat State Civil Supplies Corporation Limited has filed reply affidavit controverting the averments made in the petition. In the reply, it is claimed that the petition for relief of regularisation in service with consequential benefits including difference in pay from

1984 should not be entertained, as the petitioner was initially appointed as daily rated salesman on account of exigencies of work and his appointment was not by way of regular selection in accordance with the service rules. In the reply, it is mentioned that as the petitioner had not pressed Special Civil Application No. 8050 of 1989 which was filed for regularisation of his services, present petition claiming similar relief should be dismissed. What is claimed in the reply is that the petitioner having not been regularly appointed, is not entitled to any reliefs claimed in the petition and the action of the respondents in not regularising services of the petitioner, should be regarded as violative of Articles 14 & 16 of the Constitution.

5. The petitioner has filed rejoinder affidavit and reiterated what is stated in the petition. By filing rejoinder, the petitioner has stressed that he is entitled to the reliefs claimed in the petition.

6. Mr. Sivang Shukla, learned counsel for Mr. Y.N.Oza, learned advocate for the petitioner submitted that in view of the fact that the petitioner is more qualified for the post than required by the rules and has been appointed on daily wages since 1984, the reliefs claimed in the petition should be granted. The learned counsel pleaded that even the Corporation itself was inclined to consider the case of the petitioner positively and sympathetically for regularisation in the year 1991, which is evident from letter dated June 26, 1991 and, therefore, the just reliefs claimed in the petition should not be denied to the petitioner. What is emphasised was that it is unfair and unreasonable to treat the petitioner as daily wager because by this time the petitioner has become age-barred for securing a job elsewhere and, therefore, in view of the provisions of Article 41 of the Constitution, the petition should be allowed. In support of his submissions, learned counsel placed reliance on the decision rendered in Jacob M. Puthuparambil and others v. Kerala Water Authority and others, AIR 1990 SC 2228.

7. Mr. K.M.Patel, learned counsel for the respondents argued that the name of the petitioner was never sponsored by the Employment Exchange and as it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchange and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered, are lower in the long waiting list in the Employment register, the reliefs

claimed in the petition should not be granted. It was urged that the petitioner was recruited on daily wages having regard to the exigencies of work prevailing in the year 1984 and, therefore, the petitioner is not entitled to benefit of regularisation of services, more particularly when he was never appointed by way of regular selection in accordance with service rules of the Corporation. What was emphasised was that the petitioner was continued in service because of pendency of petition filed by the petitioner and interim orders passed by the High Court therein, but the petitioner should not be granted the relief of regularisation of service. It was further highlighted that as the petitioner was not regularly appointed on a substantive post, the petitioner is not entitled to regular pay scale or allowances and, therefore, the petition should be dismissed. In support of his submissions, learned counsel placed reliance on the decision in Delhi Development Horticulture Employees' Union v. Delhi Administration,Delhi and others, AIR 1992 S.C. 789.

8. After considering the facts and circumstances of the case and submissions made by the learned counsel for the parties, I find that the petitioner has been continued in service on daily wages since 1984. It is not the case of the Corporation that the appointment of the petitioner on regular basis was not permissible under the recruitment rules, nor it is the case of the respondent Corporation that the petitioner was appointed as a stop gap measure in leave vacancy. Though in the reply it is mentioned that because of temporary need only the petitioner was appointed on daily wages in the years 1984, it is not mentioned nor it is averred in the reply affidavit that the work of gas distribution centre at Nadiad has decreased in any manner. Therefore, it will have to be held that the petitioner was not appointed because of temporary need only. It is relevant to notice that it is not the case of the Corporation that it was never intended by it to give regular appointment to the petitioner and had there been any such intention, letter dated June 26, 1991 would not have been addressed by the Corporation to the petitioner stating that his case for regularisation would be considered by the Corporation positively and sympathetically. The petitioner has a specific job to do and it is nobody's case that the petitioner is surplus to the requirement of the establishment. It is true that in Para-9 of the reply, it is sought to be contended that there are three regularly appointed salesmen working at Nadia Gas Centre and the petitioner is an additional hand whose services are not required, but except this bald assertion, no

particulars are placed on record which would indicate that the petitioner is an additional hand. It is relevant to notice that the petitioner was not employed on daily wages on humanitarian ground, nor was appointed against leave vacancy. The reply filed on behalf of the Corporation does not show that the salesmen who were regularly recruited were recruited through the channel of Employment Exchange. Moreover the petitioner has claimed that his name was registered with local office of Employment Exchange in the year 1990. Therefore, the principles laid down in Delhi Development Horticulture Employees' Union (supra) will not be applicable to the facts of the present case. As observed earlier, the Corporation has not pleaded in the reply that the petitioner is not qualified to be appointed as a salesman-cum-clerk. It is not even the case of the respondents that the work of the petitioner as a salesman-cum-clerk is unsatisfactory or that he has committed any misconduct at any point of time till this date. Under these circumstances, I am of the opinion that some relief deserves to be granted to the petitioner. At this stage, it would be instructive to refer to pertinent observations made by the Supreme Court in Jacob M. Puthuparambil (supra), which are as under :

> "It is unfair and unreasonable to remove people who have been rendering service since sometime as such removal has serious consequences. The family of the employee which has settled down and accommodated its need to the emoluments received by the bread winner will face economic ruination, if the job is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered age barred for securing a job elsewhere. It is indeed unfair to use him, generate hope and a feeling of security in him, attune his family to live within his earnings and then suddenly to throw him out of job. Such behaviour would be an affront to the concept of job security and would run counter to the constitutional philosophy, particularly the concept of right to work in Article 41 of the Constitution."

It may be observed that though in the present case, petitioner's services are not sought to be terminated, but the services of the petitioner have been availed of by the Corporation since 1984 and a hope was generated to regularise his services by addressing a letter in June, 1991. If the services of the petitioner

are not ordered to be regularised, there is every possibility that the petitioner would be thrown out of job which, according to the Supreme Court, would be an affront to the concept of job security and would run counter to the constitutional philosophy, particularly the concept of right to work in Article 41 of the Constitution. I am aware of the limitations prescribed by the decisions of the Supreme Court that regularisation of services of an employee should be ordered in rare cases, but as the respondents have failed to consider the case of the petitioner for regularisation sympathetically, though promised, I am of the view that necessary direction deserves to be issued to the respondents. The question of regularisation of a daily rated employee and payment to him of the pay equal to that of a regular employee arises when the daily rated employee is doing the same work as a regular workmen and though there being a vacancy available for him, he is not absorbed against it or even paid the equal pay for the period during which the same work is taken from him. The Supreme Court in Registrar General of India and another v. V. Thippa Setty and others, (1998)8 SCC 690 has ruled that normally regularisation should be prospective and not retrospective so that seniority of those who are already in regular service is not affected. Thus, the whole claim made in the petition cannot be accepted, nor the petitioner would be entitled to backwages, but having regard to the facts of the case, I am of the view that interest of justice would be served if the respondents are directed to regularise services of the petitioner from February 1, 2001 and pay minimum pay scale to the petitioner for the post which he is holding and to take into account service from 1984 for the purposes of leave, pension and increments , but not for the purposes of seniority. As I am inclined to direct the respondents to regularise the services of the petitioner with effect from February 1, 2001, the petitioner would not be entitled to relief of backwages.

For the foregoing reasons, the petition partly succeeds. The respondents are directed to regularise the services of the petitioner from February 1, 2001 and place him in minimum pay scale admissible to the post which he is holding. The respondents are further directed to take into account services rendered by the petitioner from February 1, 1984 till date for the purposes of leave, pension, increments, but not for the purposes of seniority. The necessary exercise in this regard shall be completed by the respondents as early as possible and preferably within two weeks from today. Rule is made absolute to the aforesaid extent only, with

no order as to costs.

(J.M.Panchal,J.)

(patel)